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March 25, 2004

Honorable Maura D. Corrigan
Michigan Supreme Court
525 W. Ottawa, 2nd Floor
P.O. Box 30052
Lansing, MI 48909

Re: Proposed Amendments of MCR 6.500 *et. seq.*
Motions for Relief from Judgment

Dear Justice Corrigan:

I received a copy of the enclosed letter to you from Craig Daly which addresses certain proposed amendments that he knew I would be concerned about. I began to outline a response but I could not think of anything to add to what Craig has already ably set forth. I am in total agreement with his remarks and I also strongly urge you not to adopt the proposed changes.

Very truly yours,

Laurence C. Burgess

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/sb

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March 16, 2004

Honorable Maura D. Corrigan
Michigan Supreme Court
525 W. Ottawa, 2nd Floor
P.O. Box 30052
Lansing, Michigan 48909

Re: Proposed Amendments of MCR 6.500 et. seq.,
Motions for Relief from Judgment

Dear Justice Corrigan,

I am writing in opposition to the proposed amendments in MCR 6.500 et. seq. In general, the proposed changes will significantly limit the ability of inmates to seek and obtain post-conviction relief, when grounds for relief actually exist. The proposed amendment will disproportionately affect indigent inmates who lack the ability to obtain the financial funds to file a motion within the proposed severe time limitations. Under the current rules, relief is already extremely difficult to obtain and rarely granted. Should the proposal be adopted, receiving relief will be akin to sighting a Quetzal bird in a Central American rainforest.

A. The one (1) year Statute of Limitation Under Proposed 6.508(E).

The newly proposed time limitation is unnecessary and unreasonable and places a severe hardship on inmates who because they rely on the limited funds of their family and friends, need time to acquire the money to retain counsel and mount an effective collateral attack on their convictions. Many of these inmates

have cursory appeals prepared by underpaid court-appointed lawyers who raised perfunctory issues (e.g., the evidence was insufficient to sustain the verdict, the sentence was disproportionate). For these defendants, their "real" appeal begins with a Motion for Relief from Judgment.

This limitation would be an unfair and result in a procedural nightmare. The one (1) year federal statute, under 28 USC §2224(a)(1) begins to run at the same time, i.e. when the judgment of conviction is final. At the conclusion of state court appellate proceedings, a defendant is compelled to start over in the state courts by way of a Motion for Relief because if he/she proceeds directly into federal court, the one (1) year will always elapse. Those inmates who would be entitled to federal relief will languish as they pursue post-conviction state proceedings. Those inmates who forego state proceedings, under the impression that the federal courts will vindicate them, will forfeit forever (with rare exceptions, i.e. retroactive changes, newly discovered evidence), their ability to seek post-conviction state relief. Simply put, there is no tolling provision for a defendant who timely seeks federal relief. This is simply unfair. I do not believe that you want to force inmates to choose between federal habeas relief or a Motion for Relief, or do both simultaneously. In addition what about the hundreds of inmates whose one (1) year has already elapsed? Will there be a one (1) year grace period for them?

B. Entitlement to Relief.

6.508(D) currently requires that the defendant demonstrate "good cause" and "actual prejudice." The proposed amendments present a virtual insurmountable bar. Not only must a defendant "establish. . . the probability of a different result," but must also "establish. . . an irregularity so offensive as to seriously affect the fundamental fairness, integrity or public reputation of the judicial proceeding." The retroactive and actual innocence provisions will be met in only the extreme and remote cases, if ever. Moreover, sentences that are "invalid" under the law, will now stand, unless they "exceed that authorized by law." Presumably, all sentences within the statutory limits will not be subject to attack. For example, a judge may improperly rely on race, sex, or national origin to impose an unconstitutional sentence, which would be insulated from review (if the appellate

attorney failed to provide effective assistance and raise it on appeal) as long as the sentence did not exceed the statutory minimum (which happens "once in a blue moon").

C. 25 Page Limit.

Although less restrictive than the above proposals, the 6.502(C) page limitation is unreasonable because, unlike other trial motions which address limited single issues, Motions for Relief are really appellate proceedings. Unlike trial motions, a defendant must not only address the substance of multiple issues, he/she must address the procedural requirements of 6.508(D) and demonstrate why he/she has met those requirements. A rule limiting the pages to fifty (50) would be consistent with the nature of the proceeding and the current appellate practice.

While I acknowledge the need for finality and the court's prerogative in this area, there are already significant bars in existence to post-conviction collateral relief. Under the current rule relief is extremely difficult and rare. These proposed amendments would make relief virtually non-existent. Much of how the system is perceived is based on common sense notions of fairness, whether it be from the victim's or defendant's viewpoint. However, I do not believe that making the process so restrictive as to make it patently unfair serves any purpose. I strongly urge you not to adopt the proposed changes.

Respectfully submitted,

Craig A. Daly, P.C.

CAD/mdz